

# State of Vermont

Buildings and General Services  
Office of Purchasing & Contracting  
10 Baldwin St  
Montpelier VT 05633-7501  
USA

## CONTRACT



**Vendor ID 0000002474**  
**Freeman-French-Freeman Architects**  
**81 Maple St**  
**Burlington VT 05401**  
**USA**

<b>Contract ID</b> 000000000000000000021260		<b>Page</b> 1 of 2
<b>Contract Dates</b> 01/03/2012 to 01/03/2013	<b>Origin</b> ADM	
<b>Description:</b> FEASIBILITY STUDY SERVICES	<b>Contract Maximum</b> \$248,000.00	
<b>Buyer Name</b> Pierce, Robert Jr.	<b>Buyer Phone</b> 802/828-2215	<b>Contract Status</b> Approved

**Phone #: 802/864-6844**

Line #	Item ID	Item Desc	UOM	Unit Price	Max Qty	Max Amt
1		Feasibility Study Services	JOB	0.01000	0.00	248,000.00

### CONTRACT TERMS AND ADDITIONAL INFORMATION

#### STANDARD CONTRACT FOR SERVICES

1. Parties. This is a contract for services between the State of Vermont, Department of Buildings and General Services (hereafter called "State"), and Freeman French Freeman Inc., with principal place of business in Burlington, Vermont, (hereafter called "Contractor"). It is the contractor's responsibility to contact the Vermont Department of Taxes to determine if, by law, the contractor is required to have a Vermont Department of Taxes Business Account Number.

2. Subject Matter and Project Location. The subject matter of this contract is services generally on the subject of Feasibility Study Services. Detailed services to be provided by the contractor are described in Attachment A. Location shall be Central Vermont - Waterbury, Montpelier and other locations if required.

3. Maximum Amount. In consideration of the services to be performed by Contractor, the State agrees to pay Contractor, in accordance with the payment provisions specified in Attachment B, a sum not to exceed \$248,000.00.

4. Contract Term. The period of contractor's performance shall begin on January 3, 2012 and end on January 3, 2013 with the main feasibility study due no later than March 2, 2012.

5. Prior Approvals. If approval by the Attorney General's Office or the Secretary of Administration is required, (under current law, bulletins, and interpretations), neither this contract nor any amendment to it is binding until it has been approved by either or both such persons.

- Approval by the Attorney General's Office is required.
- Approval by the Secretary of Administration is required.
- Approval by the CIO/Commissioner DII is not required.

6. Amendment. This agreement represents the entire agreement between the parties; No changes, modifications, or amendments in the terms and conditions of this contract shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and Contractor.

7. Cancellation. This contract may be canceled by either party by giving written notice at least thirty (30) days in advance.

8. Attachments. This contract consists of pages 16 including the following attachments which are incorporated herein:

Attachment A - Specifications of Work to be Performed

Attachment B - Payment Provisions

Attachment C - "Standard State Provisions for Contracts and Grants" a preprinted form (revision date 01/10/2011)

Attachment D - Standard State Provisions - Architect/Engineer Professional Service Agreement dated April 12, 2011

9. Order of Precedence. Any ambiguity, conflict or inconsistency in the Contract Documents shall be resolved according to the following order of precedence:

- 1) Standard Contract
- 2) Attachment C (Standard Contract Provisions for Contracts and Grants)
- 3) Attachment D
- 4) Attachment A
- 5) Attachment B

#### MASTER COPY DISTRIBUTED:

Contractor, Accounting, Regional Director, Contract Clerk, JPO, DFM

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Office of Purchasing & Contracting  
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DEPT ID: 1160554000  
PROJECT #: 113280 (Feasibility Study)  
BUILDING: NA (Waterbury & Montpelier State Office Complexes and other locations as required)

WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS CONTRACT

By the STATE of VERMONT

Date: 1/11/2012

Signature: Michael J. Blachinski

Name: Michael J. Obuchowski

Title: Commissioner BGS

Email: Mike.Obuchowski@State.Vt.US

By the CONTRACTOR

Date: 10 JAN 12

Signature: Jim Kim

Name: JESSE BECK, AIA, NCARB

Title: PRESIDENT - FFF

Email: JBECHEFFING.COM

2012 JUN 11 PM 1 04

RECEIVED - MONTELEONE  
AT PURCHASING &  
CONTRACT ADMIN

**Attachment 'A'****SCOPE OF WORK  
Waterbury Office Complex  
Feasibility Study****Scope:**

In accordance with the State of Vermont's Request for Feasibility Study Proposals dated November 10, 2011, Contractor shall provide all labor, equipment, materials, analysis, reports, and cost estimates required (including all direct and indirect expenses) for a Feasibility Study that assesses and evaluates the various options identified below to determine the best long term solution for housing approximately 1200<sup>1</sup> state employees displaced by Tropical Storm Irene. In this context "housing" means providing appropriate and suitable work space for state employees in the central Vermont area. The State reserves the right to utilize any of the listed options in any order based on the States best interest.

Freeman French Freeman shall provide a Feasibility Study that analyzes and assesses the following "Options":

1. **Return and Full Re-use:** Return and full reuse of the Waterbury Complex by the state. This option should include, at a minimum, analysis of: (i) retaining all existing buildings; and (ii) retaining selected historic buildings in combination with and proposed new construction; and (iii) simply retaining a mix of existing and selected historic buildings.
2. **Multi-use:** State to reoccupy a portion of the Complex along with other development opportunities for alternative uses of the site including public, public/private partnership or private ownership to buy, lease, subdivide, convert to condominiums, or any combination thereof. This may also involve mixed use of retail, office, residential space, or any other suitable and appropriate use. The Multi-use study shall also include the design of a building(s) for any state function displaced from the Complex to an alternate location in Waterbury or the immediate surrounding area. Alternate sites will be identified by the Department of Buildings and General Services.
3. **New Off Site Building:** Complete analysis of a new state office building(s). Site location(s) will be identified by the Department of Buildings and General Services.
4. **Hybrid:** Ability to modify or recommend any combination thereof the above opportunities.

Freeman French Freeman shall, as directed by the State, be expected to provide their expertise and to provide qualified subcontractors, as identified in their response to the RFP, to assist the state in assessing and evaluating the various options for providing appropriate and suitable work space for state employees.

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<sup>1</sup> 1200 is the approximate number of state employees that the Department of Human Resources considered to be "stationed" in Waterbury and is not meant to be considered an exact representation of the number of employees working out of Waterbury pre-Irene nor does it represent the maximum number of employees that may be considered under this Feasibility study.

Freeman French Freeman will participate and facilitate discussions with the State, all involved departments and agencies, and stake holders.

Freeman French Freeman will provide information and facilitate discussions and is expected to present their findings, or aspects of their findings and analysis to the Administration's Advisory Committee.

Freeman French Freeman shall, in all instances, consider the "highest and best use". "Highest and best use" means the reasonably probable and legal use of the property (or properties), that is physically possible, appropriately supported, financially feasible, and incorporates the following:

- (i) Incorporates the priorities of state government as identified by BGS, but not limited to, environmental conservation, historic preservation, sustainability, and renewable energy that improves the efficiency and effectiveness of state government while focusing on customer service and state employees.
- (ii) Any proposed new building, buildings, or rehabilitation of existing buildings will incorporate the highest level of development, technologies, and practices now readily available for the design, construction, and operation of facilities of this type and nature.
- (iii) The freedom to assess and analyze options which are not limited by the number, configuration, or condition of any existing structures except that any plan analyzed must be in compliance with the Vermont Historic Preservation Act, 22 V.S.A. §§ 701 et seq.

**Contract Dates & Deliverables:**

As indicated in the RFP, the state's timeline is of critical importance.

**Overall due dates:**

- The Feasibility Study will begin on January 3, 2012.
- The final study report is due by March 2, 2012.
- The contract will remain open until January 2, 2013, in the event that additional study work, reports, historic property negotiations or other pertinent services are required.

**Specific responsibilities and timing:**

The team's work will begin with a thorough existing conditions investigation of the Waterbury complex site to determine the current condition and reuse potential for all of the existing buildings included in the scope of work. FFF and Goody Clancy have extensive in house expertise in the evaluation of historic buildings. The field investigation will include hands on assessment and documentation of the physical condition of each building to inform the recommendations made as part of the Feasibility Study.

Following the all-team survey of existing conditions, the combined architectural team of FFF and Goody Clancy will be split into three groups, each of which will be responsible for exploring one of the following use options and creating easily understood drawings to illustrate associated ideas:

- The return and full re-use of the complex by the State;
- Multi-use that includes the state and possible private partnerships and/or ownership; and
- New off-site building(s) to house State offices.

Possible hybrid approaches will result naturally from the exchange between these three groups.

**Flood Mitigation Strategies:**

Evaluation of the flood mitigation options and storm water control for the Waterbury site and possible new sites identified by the State will be most intensive in the first weeks of the eight week schedule to best inform the design efforts.

**Central Energy Plant Options:**

This effort will also be heaviest in the first weeks of the study period and then evolve into more focused building design options. The team will be seeking the solutions that work most effectively together and provide the best long-term solutions for the State.

**Economic Evaluation:**

A conceptual level market visibility assessment is needed at the very beginning of the eight week schedule to determine what might be the best economic fit for multi-use strategies.

**Team Meetings:**

The four strands of exploration will not be happening in isolation but rather concurrently with an intense level of activity in the first two weeks of the project in order to inform the designs. Fully integrated weekly internal team meetings will ensure an interactive sharing of information and ideas which is consequently influenced by the other areas of practice and expertise.

**Meetings with State:**

The team is expected to be available for meetings with various representatives of the State for the first six weeks of the study. The suggested agenda for these meetings is as follows:

- Week 1 – Project Kick-Off (towards the end of the first week of January) Review provided program and site information, client expectations and information from on-site evaluations. This is an all-consultant meeting. The entire team will have spent time earlier in the week on-site evaluation and absorbing available information.
- Week 2 – Focus on Engineering, Flood and Energy Issues, Review preliminary and / or draft reports on existing conditions including structural and building code issues.
- Week 3 – Focus on Architectural options and Market Evaluation. Team will be expected to deliver a draft of the architectural history section proposed to be included in the final report and reviews any recommendations for demolition (influenced by heritage value, existing conditions and difficulty/excessive cost of reuse).
- Week 4 - Focus on Engineering – Flood and Energy Issues “Order of magnitude” provide a draft of first cost implications and preliminary life cycle cost benefits.
- Week 5 – Focus on Architectural Options; draft of ‘Order of magnitude” cost implications.
- Week 6 – Synthesized Review of All Issues. Review with BGS expectations of materials to be included in report.
- Weeks 7 & 8 – As of the date this agreement was signed, the current expectation is that the Draft of the Final Report will be sent to BGS for review and comment as early as possible in Week 7. Team to utilize the remaining time to create Final Report.

Freeman French Freeman may be asked to provide brief summaries of weekly meetings with BGS and may be asked to provide summaries or reports on aspects of their findings an analysis throughout the 8 week timeline.

**Ownership of Documents:**

All products of Consultant's work, including any drawings, specifications, estimates, and all other documents, including any shop drawings, calculations, etc., prepared at any time in connection with the feasibility study, are the sole property of the State, whether the work is executed or not and may not be copyrighted or resold by Consultant. The Consultant, upon request by the State, hereby agrees to furnish drawings in .dwg and PDF formats, and any final PDF drawings are to be stamped and signed; final .dwg drawings do not need to be stamped or signed. Specifications, estimates and all other electronic documents are to be in or converted to Microsoft Office: Word, Excel, Project, etc. Any project documents that are not in or converted to one of the above electronic formats, contractor is to provide three (3) copies of all such documents. All .dwgs documents shall be submitted in AutoCAD 2004 format or newer with all items embedded including Xrefs and photos. Consultant to verify compatibility with the State's CADD unit prior to using any AutoCAD specialty software suite or product (civil, mechanical, map, etc.). Furnish all custom support cad files (fonts, line types, plot styles, etc.) Any drawings to include a configured layout tab with sheet border and viewports for printing. All electronic files are to be submitted on an optical disc, CD or DVD in a format suitable for use by Buildings and General Services. These documents are to be provided at no additional cost to the State.

**Communications with members of the Press or Public:**

Freeman French Freeman should refer all questions about this project to the State, care of Commissioner's Office, Department of Buildings and General Services. In general, Freeman French Freeman should feel free to acknowledge that they have been hired by the State of Vermont to perform the feasibility study as defined in the contract. This work is on-going and consistent with the terms and conditions of the contract. Any specific questions about the scope of work, locations, contract provisions, time lines, change orders, or any other questions beyond the general parameters outlined above should be referred to the Commissioner's Office as referenced above.

If there are any duties and/or responsibilities not clearly defined in the Scope of Work that were identified by the contractor in the response to the RFP, the Contractor is expected to agree and perform said duties and obligations.

End of Attachment A

**Attachment 'B'**  
**PAYMENT PROVISIONS**  
**Waterbury Office Complex**  
**Feasibility Study**

1. Payment Provisions: The State shall be obligated to pay Contractor as follows:

- a) All invoices shall be submitted to the Department of Buildings & General Services, State of Vermont, Montpelier, Vermont, and shall indicate the Contract number. Upon mutual agreement a single invoice may be submitted after completion of all the work or progress invoices may be submitted on or about the first of each month for all work completed during the preceding month. Progress invoices shall certify that payments are on a current basis and shall include a detailed description of the work performed and hours of work. At the sole discretion of the State, payments on invoices may be withheld in whole or part if in the opinion of the State the total balance due pursuant to this Contract is insufficient to complete the project. Payment of progress and final invoices shall be due from the State 30 days after delivery of an invoice free of errors in documentation. Send invoices directly to:

Attn. John Ostrum  
Dept of Buildings & General Service  
2 Governor Aiken Avenue  
Montpelier, Vermont 05633-5801

- b) Contractor shall be paid on an hourly basis consistent with its attached Cost Proposal dated December 5, 2011.

- c) The total Level of Effort assumed for the Contractor and its subcontractors is as follows:

Freeman French Freeman – Architect of Record	\$50,000
Good Clancy – Design, Master Planning, Architectural Historian	\$80,000
Rist Frost Shumway – MEP Engineers	\$40,000
Engineering Ventures – Civil & Structural Engineering	\$35,000
VHB – Flood Mitigation	\$15,000
SE Group – Landscape Design	\$ 5,000
Vermeulens – Cost Consultants	\$10,000
RJA – Code Consultants	\$ 7,000
Doug Kennedy Advisors – Market Analysis	\$ 6,000
<b>Total Fee \$248,000</b>	

- d) The cost of the three study options is:

Return and Full Re-use.....	\$87,000
Multi-use.....	\$87,000
Off Site Building.....	\$74,000
Hybrid.....	Included in above

- e) Unless the Owner and the Contractor have agreed to and executed a change order which includes an increase in the MAXIMUM LIMITING AMOUNT, the State shall not be obligated to pay more than the MAXIMUM LIMITING AMOUNT BID OF **\$248,000.**

End of Attachment 'B'

**STATE OF VERMONT**  
**RFP – WATERBURY OFFICE COMPLEX – FEASIBILITY ANALYSIS**  
**ISSUE DATE: NOVEMBER 10, 2011**  
**FEE STRUCTURE AND PRICE SCHEDULE**

**UPDATED: November 22, 2011**

Page 1 of 1

Based on the respondents understanding of the options identified under Phase II Section 2.1, b) of the RFP and in consideration of the required timeframe for completing the analysis, estimate the total cost associated with requirements of this RFP.

Return and Full Re-use:	\$87,000.00
Multi-use:	\$87,000.00
New Off Site Building (assume 1,200 employees and 250 gsf/person)	\$74,000.00
Hybrid:	Not required at this time
Total Cost: <u>\$248,000.00 (Two-hundred-forty-eight-thousand)</u>	

Additionally, submit the titles, hourly rates, and job descriptions for any and all team members that will be providing services as part of this RFP; include all applicable taxes, fees, overhead, and all other direct or indirect expenses. The attached **Price Schedule** must be completed and submitted as part of the response for the proposal to be considered valid.

FIRM NAMES	Team Member(s)	HOURLY RATE
Lead Firm: <b>Freeman French Freeman</b>	Designer	\$65
	Job Captain	\$75
	Interiors	\$85
	Project Architect	\$90
	Project Manager	\$100
	Design Principal	\$115
	Principal	\$130
Sub-Consultant: <b>Goody Clancy</b>	Principal – Senior Associate/ Associate	\$180
	Associate – Senior Associate/Associate	\$121-179
	Manager – Senior Project Manager/Designer/Planner/ Technical	\$131-156
	Professional III – Architect (Proj. Manager)/Planner/ Urban Designer/ Preservationist	\$110-135
	Professional II – Architect (Designer/Detailer)/Planner (6-8 years)	\$105-125
	Professional I – Architect/ Detailer/Planner/ Preservationist (3-5 years)	\$100-121



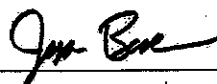
	Intern III -- Unlicensed graduate with less than three years experience	\$78-105
	Intern II -- Unlicensed graduate with one or two years experience	\$62-84
	Intern I -- Unlicensed, new or about to graduate	\$59-62
Sub-Consultant: <b>Engineering Ventures, PC</b>	David Boehm, PE, Principal	\$150
	Robert Neeld, PE, President	\$140
	Peter Gibbs, PE, Vice President	\$135
	Kevin Worden, PE, Vice President	\$130
	Russell Miller-Johnson, PE, Senior Engineer	\$130
Sub-Consultant: <b>Vanasse Hangen Brustlin Inc. (VHB)</b>	Principal Level 1-3	\$225-\$300
	Technical/Professional Level 1-19	\$35-\$215
	Technical/Support 1-5	\$35-\$75
Sub-Consultant: <b>Rist-Frost-Shumway Engineering, P.C.</b>	Technical Assistant	\$63
	Junior Designer	\$63-\$78
	Designer	\$86-\$110
	Senior Designer	\$118-\$126
	Supervising Designer	\$135
	Design Professional	\$80-\$126
	Senior Design Professional	\$140-\$170
	Supervising Design Professional	\$185-200
	Principal	\$210
Sub-Consultant: <b>SE Group</b>	Mark Kane, Director of Community Planning and Design	\$150
	Mark Hamelin, Senior Landscape Architect	\$150
	Michael Willard, Senior Associate Landscape Architect	\$120
	Adam Portz, Associate Landscape Architect	\$95
	Mitch Lefevre, Staff Landscape Architect	\$75
Sub-Consultant: <b>Rolf Jensen &amp; Associates, Inc. (RJA)</b>	Jeremy Mason, PE, Senior Consultant/RJA Project Manager	\$175
	Chris Lynch, PE, Senior Consultant	\$150

Sub-Consultant: <b>Vermeulens Cost Consultants</b>	James Vermeulen, Co-CEO	\$240
	Richard Vermeulen, Co-CEO	\$240
	Craig Chiarelli, Director of Estimating	\$195
	Gavin English, Associate	\$195
	Riv Manning, Senior Cost Consultant / Architectural+Structural	\$165
	Anthony Lizzi, Senior Cost Consultant / Mechanical+Electrical	\$165
	Melissa Chabot, Senior Cost Consultant / Mechanical+Electrical	\$165
	Blair Tennant, Senior Cost Consultant / Mechanical+Electrical	\$165
	Shelley Brooks, Senior Cost Consultant / Architectural+Structural	\$165
	Laurie Finlay, Senior Cost Consultant / Architectural+Structural	\$135
	Lee-Anne Leslie, Cost Consultant / Interiors	\$105
	Barb Tarrington, Cost Consultant	\$90
Sub-Consultant: <b>Doug Kennedy Advisors</b>	Doug Kennedy	\$125

Date: December 5, 2011

Name of Firm: Freeman French Freeman

Signature of Firm: \_\_\_\_\_



## **ATTACHMENT C: STANDARD STATE PROVISIONS FOR CONTRACTS AND GRANTS**

1. **Entire Agreement:** This Agreement, whether in the form of a Contract, State Funded Grant, or Federally Funded Grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.
2. **Applicable Law:** This Agreement will be governed by the laws of the State of Vermont.
3. **Definitions:** For purposes of this Attachment, "Party" shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement.
4. **Appropriations:** If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, and in the event federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.
5. **No Employee Benefits For Party:** The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the state withhold any state or federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.
6. **Independence, Liability:** The Party will act in an independent capacity and not as officers or employees of the State.

The Party shall defend the State and its officers and employees against all claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit.

After a final judgment or settlement the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party.

The Party shall indemnify the State and its officers and employees in the event that the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party.

7. **Insurance:** Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverages are in effect. It is the

responsibility of the Party to maintain current certificates of insurance on file with the state through the term of the Agreement. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

**Workers Compensation:** With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont.

**General Liability and Property Damage:** With respect to all operations performed under the contract, the Party shall carry general liability insurance having all major divisions of coverage including, but not limited to:

Premises - Operations  
Products and Completed Operations  
Personal Injury Liability  
Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:

\$1,000,000 Per Occurrence  
\$1,000,000 General Aggregate  
\$1,000,000 Products/Completed Operations Aggregate  
\$ 50,000 Fire/ Legal/Liability

Party shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.

**Automotive Liability:** The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than: \$1,000,000 combined single limit.

Party shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.

8. **Reliance by the State on Representations:** All payments by the State under this Agreement will be made in reliance upon the accuracy of all prior representations by the Party, including but not limited to bills, invoices, progress reports and other proofs of work.
9. **Requirement to Have a Single Audit:** In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, and if this Subrecipient expends \$500,000 or more in federal assistance during its fiscal year, the Subrecipient is required to have a single audit conducted in accordance with the Single Audit Act, except when it elects to have a program specific audit.

The Subrecipient may elect to have a program specific audit if it expends funds under only one federal program and the federal program's laws, regulating or grant agreements do not require a financial statement audit of the Party.

A Subrecipient is exempt if the Party expends less than \$500,000 in total federal assistance in one year.

The Subrecipient will complete the Certification of Audit Requirement annually within 45 days after its fiscal year end. If a single audit is required, the sub-recipient will submit a

copy of the audit report to the primary pass-through Party and any other pass-through Party that requests it within 9 months. If a single audit is not required, the Subrecipient will submit the Schedule of Federal Expenditures within 45 days. These forms will be mailed to the Subrecipient by the Department of Finance and Management near the end of its fiscal year. These forms are also available on the Finance & Management Web page at: <http://finance.vermont.gov/forms>

- 10. Records Available for Audit:** The Party will maintain all books, documents, payroll papers, accounting records and other evidence pertaining to costs incurred under this agreement and make them available at reasonable times during the period of the Agreement and for three years thereafter for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved. The State, by any authorized representative, shall have the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed under this Agreement.
- 11. Fair Employment Practices and Americans with Disabilities Act:** Party agrees to comply with the requirement of Title 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement. Party further agrees to include this provision in all subcontracts.
- 12. Set Off:** The State may set off any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.
- 13. Taxes Due to the State:**
  - a. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
  - b. Party certifies under the pains and penalties of perjury that, as of the date the Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
  - c. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
  - d. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.
- 14. Child Support:** (Applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date the Agreement is signed, he/she:

- a. is not under any obligation to pay child support; or
- b. is under such an obligation and is in good standing with respect to that obligation; or
- c. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

Party makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Party is a resident of Vermont, Party makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

- 15. Sub-Agreements:** Party shall not assign, subcontract or subgrant the performance of his Agreement or any portion thereof to any other Party without the prior written approval of the State. Party also agrees to include in all subcontract or subgrant agreements a tax certification in accordance with paragraph 13 above.
- 16. No Gifts or Gratuities:** Party shall not give title or possession of any thing of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.
- 17. Copies:** All written reports prepared under this Agreement will be printed using both sides of the paper.
- 18. Certification Regarding Debarment:** Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in federal programs or programs supported in whole or in part by federal funds.

(End of Standard Provisions)

## **Attachment D**

### **Standard State Provisions**

#### **Architect/Engineer Professional Service Agreement**

Attachment C, Paragraph 6 is deleted in its entirety and replaced with the following:

#### **6. Independence, Liability, Indemnity:**

- A. The Party will act in an independent capacity and not as officers or employees of the State.
- B. This Agreement requires the Party to provide professional services in the design and/or engineering of all or a part of the Project to which this Agreement relates. This is not an Agreement for construction services. However, construction administration, observation or certification services may be required on the part of the Party if this Agreement so provides. Before commencing work on this Agreement and throughout the term of this Agreement, the Party shall procure and maintain professional liability insurance for all services performed under this Agreement, with minimum coverage as required by the Agency of Administration but not less than \$1,000,000 per claim and \$2,000,000 policy aggregate.
- C. The Party shall defend the State and its officers and employees against all claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party in providing "non-professional services" under this Agreement. As used herein, "non-professional services" means services provided under this Agreement other than professional services relating to the design and/or engineering of all or part of the project. The State shall notify the Party in the event of any such claim or suit covered by this Subsection C, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit arising out of "non-professional services" provided under this Agreement.
- D. Notwithstanding anything to the contrary set forth in Subsection C above, the Party shall not be obligated to defend the State and its officers and employees against claims or suits arising from the Party's provision of engineering design services or architectural design services. However, the Party's obligation to defend the State and its officers and employees against all claims or suits arising out of "non-professional services" provided under this Agreement as provided in Subsection C above and the Party's other obligations under Attachment C shall remain in effect.
- E. The Party agrees to indemnify and hold the State, its officers and employees, harmless from and against monetary damages to third parties, together with reasonable costs, expenses and attorney's fees incurred and paid by the State in defending claims by third parties (collectively "Damages") but only in the event and to the extent such Damages are incurred and paid by the State as the proximate cause of negligent acts, errors or omissions ("Professional Negligence") by the Party, its employees, agents, consultants and subcontractors, in providing the professional services required under this Agreement.

F. As used herein, "Professional Negligence" or "negligent acts, errors or omissions" means a failure by the Party to exercise that degree of skill and care ordinarily possessed by a reasonably prudent design professional practicing in the same or similar locality providing such services under like or similar conditions and circumstances.

G. The Party shall indemnify the State and its officers and employees in the event that the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party arising from the provision of "non-professional services" (as defined herein) under this Agreement.

H. The Party shall not be obligated to indemnify the State for any Damages incurred by the State attributable to the State's own negligent acts, errors or omissions or the negligent acts, errors or omissions of its officers, agents or employees, or the acts, errors, omissions or breach of Agreement by persons or entities other than the Party, its employees, agents, consultants and subcontractors.

I. After a final judgment or settlement the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party.

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